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Human rights situations that require the Council's attention

Albania, Andorra,* Austria,* Belgium, Bosnia and Herzegovina,* Bulgaria,* Canada,* Croatia, Cyprus,* Czechia,* Denmark,* Estonia,* Finland,* France,* Germany, Greece,* Hungary, Ireland,* Italy,* Latvia, Liechtenstein,* Lithuania,* Luxembourg,* Malta,* Monaco,* Montenegro,* Netherlands, Poland,* Portugal, Romania,* Slovakia,* Slovenia, Spain,* Sweden,* United Kingdom of Great Britain and Northern Ireland, United States of America: draft resolution

34/... Situation of human rights in Myanmar

The Human Rights Council,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights, and reaffirming all relevant Human Rights Council and General Assembly resolutions on the situation of human rights in Myanmar, the most recent being Council resolutions 29/21 of 3 July 2015 and 31/24 of 24 March 2016 and Assembly resolution 70/233 of 23 December 2015,

Welcoming the work and the reports of the Special Rapporteur on the situation of human rights in Myanmar, including the report submitted to the Council at its thirty-fourth session,[1] and the cooperation of the Government of Myanmar with the Special Rapporteur, including the facilitation of her visits to some parts of the country from 20 June to 1 July 2016 and, most recently, from 9 to 21 January 2017,

Taking note of the general observations of Myanmar on the report of the Special Rapporteur submitted to the Council at its thirty-fourth session,[2]

Recalling the report of the United Nations High Commissioner for Human Rights on the situation of human rights of Rohingya Muslims and other minorities in Myanmar[3] and the recommendations contained therein, and the flash report of the Office of the United Nations High Commissioner for Human Rights of 3 February 2017, entitled "Interviews

* State not a member of the Human Rights Council.
[1] A/HRC/34/67.
[2] A/HRC/34/67/Add.1.
[3] A/HRC/32/18.

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with Rohingyas fleeing from Myanmar since 9 October 2016", prepared following a mission to Bangladesh,

Recalling also its resolution 5/1, on institution-building of the Human Rights Council, and 5/2, on the Code of Conduct for Special Procedures Mandate Holders of the Council, of 18 June 2007, and stressing that the mandate holder shall discharge his or her duties in accordance with those resolutions and the annexes thereto, *Stressing* that States have the primary responsibility for the promotion and protection of human rights,

1. *Welcomes* the positive developments in Myanmar towards political and economic reform, democratization, national reconciliation, good governance and the rule of law and the efforts made to promote and protect human rights and combat corruption, and encourages the Government to take further steps to address outstanding concerns;

2. *Also welcomes* the formation of a democratically elected government, while calling upon all actors to consolidate the democratic transition with full respect for the rule of law and human rights by bringing all national institutions, including the military, under civilian control, and to ensure the inclusion of all ethnic and religious minorities in the political process;

3. *Further welcomes* the announcement of the Government of Myanmar to make peace and national reconciliation its top priority, and the holding of the Twenty-first Century Panglong Conference from 31 August to 3 September 2016, while calling for further steps, including enhanced efforts to reach out to those ethnic armed groups that have not yet signed the nationwide ceasefire agreement, an immediate cessation of fighting and hostilities and of all violations of international human rights law and international humanitarian law in northern Myanmar, as applicable, the provision of immediate, safe and unhindered humanitarian access, including to areas controlled by ethnic armed groups, in particular in Kachin and Shan States, and the pursuit of an inclusive and comprehensive national political dialogue ensuring full and effective participation of women and young people, as well as civil society, with the objective of achieving lasting peace;

4. *Recognizes* the initial steps taken by the Government of Myanmar to address the underlying causes of the situation in Rakhine State, including by setting up the Central Committee for the Implementation of Peace, Stability and Development in Rakhine State and the Advisory Commission on Rakhine State, established on 5 September 2016 at the behest of the State Counsellor of Myanmar, Daw Aung San Suu Kyi, and chaired by former Secretary-General Kofi Annan, and commencing work on a long-term socioeconomic development plan for Rakhine State, welcomes the concurrence of the Government of Myanmar with the recommendations of the interim report of the Advisory Commission made public on 16 March 2017, and looks forward to their prompt implementation for stability, peace and prosperity in Rakhine State, in full consultation with all the communities concerned;

5. *Calls upon* the Government of Myanmar to continue efforts to eliminate statelessness and the systematic and institutionalized discrimination against members of ethnic and religious minorities, including the root causes of discrimination, in particular relating to the Rohingya minority, inter alia by reviewing the 1982 Citizenship Law, which has led to deprival of human rights, by ensuring equal access to full citizenship through a transparent, voluntary and accessible procedure and to all civil and political rights, by allowing for self-identification, by amending or repealing all discriminatory legislation and policies, including discriminatory provisions of the set of "protection of race and religion laws" enacted in 2015 covering religious conversion, interfaith marriage, monogamy and population control, by lifting local orders restricting rights to freedom of movement and access to civil registration, health and education services and by improving the squalid living conditions within camps for internally displaced persons;

6. *Also calls upon* the Government of Myanmar to take further measures for a voluntary and sustainable return of all internally displaced persons, refugees and others who have had to leave Myanmar, including from the Rohingya minority, in safety, security and dignity and in accordance with international law;

7. *Condemns* the attacks carried out against border guard posts on 9 October 2016 in northern Rakhine State, and expresses its deep concern over the serious subsequent further deterioration of the security, human rights and humanitarian situation in Rakhine State, which has forced tens of thousands of members of the Rohingya minority to seek refuge in Bangladesh or elsewhere in Rakhine State;

8. *Urges* the Government of Myanmar to lift the curfew order in Rakhine State, to promote the freedom of movement and safety and security of all persons, to allow and facilitate immediate, safe and unhindered humanitarian access to all people in need of assistance throughout the country, to enable without delay the full resumption of aid programmes, to allow independent observers and representatives of the media access and to safeguard those who report abuses;

9. *Recognizes* that the Government of Myanmar notes the seriousness of the allegations contained in the flash report of the Office of the United Nations High Commissioner for Human Rights entitled "Interviews with Rohingyas fleeing from Myanmar since 9 October 2016"

10. *Notes* that the Government of Myanmar has established an investigation commission led by Vice-President U Myint Swe, encourages the publication of a credible report on the findings of the commission without delay, and calls upon the Government of Myanmar to consider assistance to enhance the capacity of this or future investigation bodies;

11. *Decides* to dispatch urgently an independent international fact-finding mission to be appointed by the President of the Human Rights Council to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State, including but not limited to arbitrary detention, torture and inhuman treatment, rape and other forms of sexual violence, extrajudicial, summary or arbitrary killings, enforced disappearance, forced displacement and unlawful destruction of property, with a view to ensuring full accountability for perpetrators and justice for victims, and requests the fact-finding mission to present to the Council an oral update at its thirty-sixth session and a full report at its thirty-seventh session;

12. *Encourages* the Government of Myanmar to cooperate fully with the fact-finding mission, including by making available the findings of the domestic investigations and other relevant information, and stresses the need for the fact-finding mission to be granted full, unrestricted and unmonitored access to all areas and interlocutors;

13. *Stresses* the need for the fact-finding mission to be equipped with all the resources and expertise necessary to carry out its mandate, including forensic expertise and expertise on sexual and gender-based violence;

14. *Strongly encourages* the Government of Myanmar to take the measures necessary to address discrimination and prejudice against women, children and members of ethnic, religious and linguistic minorities across the country, and to take further action to publicly condemn and speak out against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, and to adopt measures to criminalize incitement to imminent violence based on nationality, race or religion or belief, while upholding freedom of expression, and to further increase efforts to promote tolerance and peaceful coexistence in all sectors of society in accordance with Human Rights Council

resolution 16/18 of 24 March 2011 and the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence by, inter alia, further facilitating interfaith and intercommunal dialogue;

15. *Notes with concern* that charges for criminal defamation have increasingly been used to target journalists, politicians, students and social media users for their peaceful expression, online as well as offline, in particular under section 66 (d) of the Telecommunications Act, the Electronic Transactions Law and provisions of the Penal Code, including section 505 (b), and that the Unlawful Associations Act and the Peaceful Assembly and Peaceful Procession Law continue to be abused to arbitrarily arrest and detain individuals for exercising their rights to freedom of expression, peaceful assembly and association, including on the basis of their ethnicity or political beliefs, and calls for open and participatory legislative processes to reform those laws in line with the international human rights law obligations of the Government of Myanmar;

16. *Welcomes* the early release of political prisoners in accordance with the obligation of the Government of Myanmar to ensure that no one remains in prison because of his or her political or religious beliefs, including those recently detained or convicted, human rights defenders and students, while calling upon the Government to fulfil its commitment to unconditionally release all remaining political prisoners and to provide for the full rehabilitation of former political prisoners, as well as to amend restrictive laws and to end remaining curbs on exercising the rights to the freedoms of expression, association and peaceful assembly, which are essential to ensure a safe and enabling environment, notably for civil society, journalists, human rights defenders, lawyers, environmental and land rights activists and civilians, and expresses concern over reports of the arrest of individuals in relation to the exercise of those rights;

17. *Emphasizes* that no one should face reprisals, monitoring, surveillance, threats, harassment or intimidation for cooperating or speaking with special procedures of the Human Rights Council, including the Special Rapporteur on the situation of human rights in Myanmar, the international independent fact-finding mission or the United Nations, and calls upon the Government of Myanmar to take appropriate measures to prevent such acts and to combat impunity by investigating promptly and effectively all allegations of intimidation and reprisal in order to bring perpetrators to justice and to provide victims with appropriate remedies;

18. *Calls upon* the Government of Myanmar to ensure prompt, thorough, independent and impartial investigations into the killings of constitutional legal expert and senior National League for Democracy adviser Ko Ni, in January 2017, land and environmental activist Naw Chit Pan Daing, in November 2016, and journalist Soe Moe Tun, in December 2016, as well as other cases, and that those responsible are held accountable;

19. *Also calls upon* the Government of Myanmar to take further steps to reform the Constitution and strengthen democratic institutions, good governance and the rule of law to ensure respect for and to promote universal human rights and fundamental freedoms in accordance with international norms and standards, stresses the need for an independent, impartial and effective judiciary and an independent and self-governing legal profession, and calls upon the Government to ensure full compliance with its obligations under international human rights law and international humanitarian law, as applicable;

20. *Welcomes* the steps taken by the Government of Myanmar to end the recruitment of child soldiers and the release of 800 child soldiers and, abhorring their use in Myanmar, urges the Government to further consolidate progress towards a complete cessation of all recruitment and use of child soldiers; the identification of all children

remaining in the ranks of government forces and their immediate release, an end to the arrest, harassment and imprisonment of children accused of desertion; continued efforts to bring perpetrators of child recruitment to justice and to criminalize the recruitment of child soldiers; increasing transparency, including by expanding access to birth registration services to children, including those vulnerable to recruitment; and ensuring the rehabilitation and reintegration of former child soldiers;

21. *Also welcomes* the steps taken by the Government of Myanmar to ratify or accede to international human rights conventions, encourages the Government to actively consider ratifying additional international human rights conventions and the optional protocols thereto, and calls for the full implementation of the Government's obligations under international human rights law and international humanitarian law, as well as those under other relevant agreements;

22. *Further welcomes* the ongoing negotiations between the United Nations High Commissioner for Human Rights and the Government of Myanmar, recalls the commitment of the Government to open a country office of the Office of the High Commissioner, with a full mandate and in accordance with the mandate of the High Commissioner, and encourages the Government to issue a standing invitation to all special procedures of the Human Rights Council;

23. *Calls upon* the Government of Myanmar and its institutions to step up efforts to strengthen the protection and promotion of human rights and the rule of law and to advance democratization and inclusive economic and social development towards the achievement of Sustainable Development Goals, including by reforming the Myanmar National Human Rights Commission in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and calls upon the international community to support Myanmar in this regard, including through technical assistance and capacity-building programmes;

24. *Encourages* all business enterprises, including transnational corporations and domestic enterprises, to respect human rights in accordance with the Guiding Principles on Business and Human Rights, calls upon the Government of Myanmar to meet its duty to protect human rights, and calls upon home States of business companies operating in Myanmar to set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction are to respect human rights throughout their operations;

25. *Welcomes* the enhanced cooperation of the Government of Myanmar with the International Labour Organization, encourages the implementation of the Supplementary Understanding for the elimination of the use of forced labour, with a complaint mechanism that is operational, and the swift revision of the Memorandum of Understanding for the elimination of the use of forced labour in Myanmar as the basis for a revitalized and strengthened action plan;

26. *Invites* the international community to support the Government of Myanmar further, including through technical assistance and capacity-building, in the fulfilment of its international human rights obligations and commitments, the advancement of democratization and economic and social development;

27. *Decides* to extend the mandate of the Special Rapporteur on the situation of human rights in Myanmar for a further period of one year, requests the Special Rapporteur to present an oral progress report to the Human Rights Council at its thirty-fifth session and to submit a report to the Third Committee at the seventy-second session of the General Assembly and to the Council at its thirty-seventh session, in accordance with its annual programme of work, and invites the Special Rapporteur to continue to monitor the situation of human rights and to measure progress in the implementation of the recommendations made by the Special Rapporteur;

28. *Welcomes* the ongoing cooperation with the Special Rapporteur, and calls upon the Government of Myanmar to continue its cooperation with the Special Rapporteur in the exercise of the mandate, including by facilitating further visits and granting unrestricted access throughout the country, and to continue to work with the Special Rapporteur to develop a work plan and time frame for the swift implementation of the proposed joint benchmarks identified in her report, and for progress in priority areas of technical assistance and capacity-building;

29. *Requests* the Secretary-General and the High Commissioner to provide the Special Rapporteur and the fact-finding mission with the assistance, resources and expertise necessary to enable them to discharge their mandates fully.